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Child Abuse and Neglect State Statutes Series

Compendium of Laws

Reporting Laws: Special Reporting Procedures – Drug-Exposed Infants



U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES
Administration for Children and Families
Administration on Children, Youth and Families
Children's Bureau

2002

This publication is one of the series **Child Abuse and Neglect State Statutes Series: Compendium of Laws**, which is produced by the National Clearinghouse on Child Abuse and Neglect Information. The Clearinghouse is a service of the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services.

The **Compendium of Laws** presents citations and text of State laws on different topics related to child maltreatment reporting laws, central registries, permanency planning and domestic violence. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as in agency regulations, case law, and informal practices and procedures. Readers interested in interpretation of specific statutory provisions within an individual jurisdiction should consult with professionals within the State familiar with the statutes' implementation.

The Child Abuse and Neglect Prevention and Treatment Act, as amended, requires States to make provision for the reporting of known or suspected instances of child abuse and neglect (42 U.S.C. 5106a). The publications included in the **Compendium of Laws: Reporting Laws** focus on how States have made provision in their statutes for defining acts that are reportable as abuse, enumerating mandated reporters, and specifying procedures for the making and receiving of child maltreatment reports.

Electronic copies of this publication may be downloaded from the Clearinghouse Web site, located on the Internet at the URL listed below. To purchase print copies of this publication or for more information about the **Child Abuse and Neglect State Statutes Series**, contact the Clearinghouse at:

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We welcome your comments and suggestions about this publication.

Special Reporting Procedures: Drug-Exposed Infants¹

Specific reporting procedures to be followed for drug-exposed infants have been enacted in approximately² 12 States and the District of Columbia. In general, these statutes make drug exposure or a positive drug test alone the basis for reporting. Standard reporting procedures³ apply in those States that statutorily define infant drug exposure as child abuse and neglect,⁴ but have no specific reporting procedures for drug-exposed infants.

Legislation Regarding Special Reporting Procedures: Drug-Exposed Infants (Current through December 31, 2001)

Alabama	Not addressed in statutes reviewed
Alaska	Not addressed in statutes reviewed
Arizona	Ariz. Rev. Stat. Ann. § 13-3620(B) (West Supp. 1998)
Arkansas	addressed in statutes reviewed
California	Cal. Penal Code § 11165.13 (West, WESTLAW through End of 1999-2000 Reg. Sess., 1 st Ex. Sess., & Nov. 7, 2000)
Colorado	Not addressed in statutes reviewed
Connecticut	Not addressed in statutes reviewed
Delaware	Not addressed in statutes reviewed
District of Columbia	D.C. Code Ann. § 4-1321.02(d) (WESTLAW through 10-2-01)
Florida	Not addressed in statutes reviewed
Georgia	Not addressed in statutes reviewed

¹ The State Statutes contain excerpts from specific sections of each State's code. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as in agency regulations, case law, and informal practices and procedures.

² The word *approximately* is used throughout the State Statutes Series to stress the fact that statutes are constantly being revised and updated.

³ See Department of Health and Human Services, Child Abuse and Neglect State Statutes Compendium of Laws: Reporting Laws: Reporting Procedures (2002).

⁴ See Department of Health and Human Services, Child Abuse and Neglect State Statutes Compendium of Laws: Reporting Laws: Definitions of Child Abuse and Neglect (2002).

Hawaii	Not addressed in statutes reviewed
Idaho	Not addressed in statutes reviewed
Illinois	325 Ill. Comp. Stat. Ann. 5/7.3b (West Supp. 1998)
Indiana	Not addressed in statutes reviewed
Iowa	Iowa Code Ann. § 232.77(2) (West 1998) Iowa Code Ann. § 232.73 (West, WESTLAW through Iowa 2001 Legis. Serv., Ch. 135
Kansas	Not addressed in statutes reviewed
Kentucky	Not addressed in statutes reviewed
Louisiana	Not addressed in statutes reviewed
Maine	Not addressed in statutes reviewed
Maryland	Not addressed in statutes reviewed
Massachusetts	Mass. Gen. Laws Ann. ch. 119, § 51A (West Supp. 1998)
Michigan	Mich. Comp. Laws. Ann. § 722.623a (West Supp. 1998)
Minnesota	Minn. Stat. Ann. § 626.5561, Subd. 1, 2, 5 (West Supp. 1999) Minn. Stat. Ann. § 626.5562 (West Supp. 1999)
Mississippi	Not addressed in statutes reviewed
Missouri	Mo. Ann. Stat. § 191.737(1), (2), (4) (West 1998)
Montana	Not addressed in statutes reviewed
Nebraska	Not addressed in statutes reviewed
Nevada	Not addressed in statutes reviewed
New Hampshire	Not addressed in statutes reviewed
New Jersey	Not addressed in statutes reviewed
New Mexico	Not addressed in statutes reviewed
New York	Not addressed in statutes reviewed

North Carolina	Not addressed in statutes reviewed
North Dakota	Not addressed in statutes reviewed
Ohio	Not addressed in statutes reviewed
Oklahoma	Okla. Stat. Ann. tit. 10, § 7103(A)(2) (West, WESTLAW through Ch. 9 of 2000 1 st Ex. Sess.)
Oregon	Not addressed in statutes reviewed
Pennsylvania	Not addressed in statutes reviewed
Rhode Island	Not addressed in statutes reviewed
South Carolina	Not addressed in statutes reviewed
South Dakota	Not addressed in statutes reviewed
Tennessee	Not addressed in statutes reviewed
Texas	Not addressed in statutes reviewed
Utah	Utah Code Ann. § 62A-4a-404 (1997)
Vermont	Not addressed in statutes reviewed
Virginia	Va. Code Ann. § 63.1-248.3(A.1) (Lexis, WESTLAW through End of 2001 Sp. Sess. I)
Washington	Wash. Rev. Code Ann. § 26.44.170(1) (West, WESTLAW through 1999 1 st Spec. Sess.)
West Virginia	Not addressed in statutes reviewed
Wisconsin	Not addressed in statutes reviewed
Wyoming	Not addressed in statutes reviewed

**Summary of Legislation Regarding
Special Reporting Procedures:
Drug-Exposed Infants
(Current through December 31, 2001)**

ARIZONA

Ariz. Rev. Stat. Ann. § 13-3620(B) (West Supp. 1998)

A health care professional whose routine newborn physical assessment of a newborn infant's health status or whose notification of positive toxicology screens of a newborn infant gives the professional reasonable grounds to believe that the newborn infant may be affected by the presence of alcohol or an illegal substance shall immediately report this information, or cause a report to be made, to child protective services in the Department of Economic Security. For the purposes of this subsection "newborn infant" means a newborn infant who is under 30 days of age.

CALIFORNIA

Cal. Penal Code § 11165.13 (West, WESTLAW through End of 1999-2000 Reg. Sess., 1st Ex. Sess., & Nov. 7, 2000)

A positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to law. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to county welfare departments and not to a law enforcement agency.

DISTRICT OF COLUMBIA

D.C. Code Ann. § 4-1321.02(d) (WESTLAW through 10-2-01)

Any licensed health professional or a law enforcement officer, except an undercover officer whose identity or investigation might be jeopardized, shall report immediately, in writing, to the Child Protective Services Division of the Department of Human Services, that the law enforcement officer or health professional has reasonable cause to believe that a child is abused as a result of inadequate care, control, or subsistence in the home environment due to exposure to drug-related activity.

ILLINOIS

325 Ill. Comp. Stat. Ann. § 5/7.3b (West Supp. 1998)

All persons required to report may refer to the Department of Human Services any pregnant person in this State who is addicted as defined in the Alcoholism and Other Drug Abuse and Dependency Act.

The Department of Human Services shall notify the local Infant Mortality Reduction Network service provider or Department-funded prenatal care provider in the area in which the person resides. The service provider shall prepare a case management plan and assist the pregnant woman in obtaining counseling and treatment from a local substance abuse service provider licensed by the Department of Human Services or a licensed hospital which provides substance abuse treatment services. The local Infant Mortality Reduction Network service provider and Department-funded prenatal care provider shall monitor the pregnant woman through the service program.

IOWA

Iowa Code Ann. § 232.77(2) (West 1998)

If a health practitioner discovers in a child physical or behavioral symptoms of the effects of exposure to cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs, or combinations or derivatives thereof, which were not prescribed by a health practitioner, or if the health practitioner has determined through examination of the natural mother of the child that the child was exposed in utero, the health practitioner may perform or cause to be performed a medically relevant test, as defined in § 232.73, on the child.

The practitioner shall report any positive results of such a test on the child to the Department of Human Services. The Department shall begin an investigation pursuant to law upon receipt of such a report.

A positive test result obtained prior to the birth of a child shall not be used for the criminal prosecution of a parent for acts and omissions resulting in intrauterine exposure of the child to an illegal drug.

Iowa Code Ann. § 232.73 (West, WESTLAW through Iowa 2001 Legis. Serv., Ch. 135)

A “medically relevant test” means a test that produces reliable results of exposure to cocaine, heroine, amphetamines, methamphetamines, or other illegal drugs, or combinations or derivatives of the illegal drugs, including a drug urine screen test.

MASSACHUSETTS

Mass. Gen. Laws Ann. ch. 119, § 51A (West Supp. 1998)

Any mandated reporter who, in his professional capacity shall have reasonable cause to believe that a child is suffering physical or emotional injury from abuse, or who is determined to be physically dependent upon an addictive drug at birth, shall immediately report such condition to the Department by oral communication and by making a written report within 48 hours after such oral communication.

MICHIGAN

Mich. Comp. Laws Ann. § 722.623a (West Supp. 1998)

In addition to the reporting requirement in § 722.623, a person who is required to report suspected child abuse or neglect and who knows, or from the child's symptoms has reasonable cause to suspect, that a newborn infant has any amount of alcohol, a controlled substance, or a metabolite of a controlled substance in his or her body shall report to the Department in the same manner as required of other reports. A report is not required under this section if the person knows that the alcohol, controlled substance, or metabolite, or the child's symptoms, are the result of medical treatment administered to the newborn infant or his or her mother.

MINNESOTA

Minn. Stat. Ann. § 626.5561, Subd. 1, 2, 5 (West Supp. 1999)

A mandatory reporter shall immediately report to the local welfare agency if the person knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy.

Any person may make a voluntary report if the person knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy. An oral report shall be made immediately by telephone or otherwise.

An oral report made by a person required to report shall be followed within 72 hours, exclusive of weekends and holidays, by a report in writing to the local welfare agency. Any report shall be of sufficient content to identify the pregnant woman, the nature and extent of the use, if known, and the name and address of the reporter.

If the report alleges a pregnant woman's use of a controlled substance for a nonmedical purpose, the local welfare agency shall immediately conduct an appropriate assessment and offer services indicated under the circumstances. Services offered may include, but are not limited to, a referral for chemical dependency assessment, a referral for chemical dependency treatment if

recommended, and a referral for prenatal care. The local welfare agency may also take any appropriate action, including seeking an emergency admission pursuant to the law. The local welfare agency shall seek an emergency admission if the pregnant woman refuses recommended voluntary services or fails recommended treatment.

A person making a voluntary or mandated report under this law or assisting in an assessment is immune from any civil or criminal liability that otherwise might result from the person's actions, if the person is acting in good faith. This does not provide immunity to any person for failure to make a required report or for committing neglect, physical abuse, or sexual abuse of a child.

Minn. Stat. Ann. § 626.5562 (West Supp. 1999)

A physician shall administer a toxicology test to a pregnant woman under the physician's care or to a woman under the physician's care within eight hours after delivery to determine whether there is evidence that she has ingested a controlled substance, if the woman has obstetrical complications that are a medical indication of possible use of a controlled substance for a nonmedical purpose. If the test results are positive, the physician shall report the results. A negative test result does not eliminate the obligation to report if other evidence gives the physician reason to believe the patient has used a controlled substance for a nonmedical purpose.

A physician shall administer to each newborn infant born under the physician's care a toxicology test to determine whether there is evidence of prenatal exposure to a controlled substance if the physician has reason to believe based on a medical assessment of the mother or the infant that the mother used a controlled substance for a nonmedical purpose during the pregnancy. If the test results are positive, the physician shall report the results as neglect. A negative test result does not eliminate the obligation to report if other medical evidence of prenatal exposure to a controlled substance is present.

Physicians shall report to the Department of Health the results of tests performed. A report shall be made on the certificate of live birth medical supplement or the report of fetal death medical supplement filed on or after February 1, 1991.

Any physician or other medical personnel administering a toxicology test to determine the presence of a controlled substance in a pregnant woman, in a woman within eight hours after delivery, or in a child at birth or during the first month of life is immune from civil or criminal liability arising from administration of the test, if the physician ordering the test believes in good faith that the test is required under this law and the test is administered in accordance with an established protocol and reasonable medical practice.

A positive test result reported under this law must be obtained from a confirmatory test performed by a drug testing laboratory which meets the requirements of the law and must be performed according to the requirements for performance of confirmatory tests imposed by the licensing, accreditation, or certification program listed in the law in which the laboratory participates.

MISSOURI

Mo. Ann. Stat. § 191.737(1), (2), (4) (West 1998)

Notwithstanding the physician-patient privilege, any physician or health care provider may refer to the Department of Health families in which children may have been exposed to a controlled substance as defined by law or alcohol as evidenced by:

- Medical documentation of signs and symptoms consistent with controlled substances or alcohol exposure in the child at birth; or
- Results of a confirmed toxicology test for controlled substances performed at birth on the mother or the child; and
- A written assessment made or approved by a physician, health care provider, or the Division of Family Services which documents the child as being at risk of abuse or neglect.

Nothing in this section shall preclude a physician or other mandated reporter from reporting abuse or neglect of a child as required pursuant to the provisions of the reporting laws.

Any physician or health care provider complying with this law, in good faith, shall have immunity from any civil liability that might otherwise result by reason of such actions.

OKLAHOMA

Okla. Stat. Ann. tit. 10, § 7103(A)(2) (West, WESTLAW through Ch. 9 of 2000 1st Ex. Sess.)

Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents, and interns, or any other health care professional attending the birth of a child who tests positive for alcohol or a controlled dangerous substance shall promptly report the matter to the Department of Human Services.

UTAH

Utah Code Ann. § 62A-4a-404 (1997)

When any person, including a licensee under the Medical Practice Act or the Nurse Practice Act, attends the birth of a child or cares for a child, and determines that the child, at the time of birth, has fetal alcohol syndrome or fetal drug dependency, he shall report that determination to the Division of Child and Family Services as soon as possible.

VIRGINIA

Va. Code Ann. § 63.1-248.3(A.1) (Lexis, WESTLAW through End of 2001 Sp. Sess. I)

For purposes of the reporting law, "reason to suspect that a child is abused or neglected" shall include:

- A finding made by an attending physician within seven days of a child's birth that the results of a blood or urine test conducted within 48 hours of the birth of the child indicate the presence of a controlled substance not prescribed for the mother by a physician;
- A finding by an attending physician made within 48 hours of a child's birth that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms;
- A diagnosis by an attending physician made within seven days of a child's birth that the child has an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a physician for the mother or the child; or
- A diagnosis by an attending physician made within seven days of a child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol.

When "reason to suspect" is based upon this subsection, such fact shall be included in the report along with the facts relied upon by the person making the report.

WASHINGTON

Wash. Rev. Code Ann. § 26.44.170(1) (West, WESTLAW through 1999 1st Spec. Sess.)

When, as a result of a report of alleged child abuse or neglect, an investigation is made that includes an in-person contact with the person who is alleged to have committed the abuse or neglect, there shall be a determination of whether it is probable that the use of alcohol or controlled substances is a contributing factor to the alleged abuse or neglect.